IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

OP.No. 20147 of 1997(W)

PETITIONER:

M/S.H.M.TRADERS,
HILL PRODUCE DEALERS,
IRITTY, THALASSERY, REP. BY
K.HUSSAIN HAJI, MANAGING PARTNER.

BY ADV. DR.K.B.MOHAMMED KUTTY

RESPONDENTS:
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1. THE INTELLIGENCE OFFICER,
AGRICULTURAL INCOME TAX & SALES TAX,
THALASSERY.

2. THE BOARD OF REVENUE (TAXES),
TRIVANDRUM, REP. BY SECRETARY-I.

3. THE TAHSILDAR(REVENUE RECOVERY),
TALUK OFFICE, THALASSERY.

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.36106/1997 IN O.P. NO.20147/1997

DISMISSED:

28.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE PENALTY ORDER ISSUED BY R1 TO PETITIONER DT.7.12.91.

P2: TRUE COPY OF REVISION ORDER ISSUED BY R2 TO PETITIONER DT.26.9.97.

P3: TRUE COPY OF DEMAND NOTICE ISSUED BY R3 TO THE PETITIONER DT.24.3.1992.

P4: TRUE COPY OF PAYMENT OF RECEIPT DT.23.3.92.

P5: TRUE COPY OF STAY IN SECOND REVISION ISSUED BY R2 TO THE PETITIONER DT.19.5.1997.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No. 20147 of 1997

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Dated this the 28th day of March, 2007.

JUDGMENT

The petitioner is challenging Ext.P2 order whereunder the Board of Revenue has in second revision sustained levy of penalty of Rs.20,000/- for excess stock of pepper and rubber found in petitioner's shop. Senior counsel appearing for the petitioner contended that penalty is excessive and arbitrary. His contention is that petitioner does not have CST registration and is the first purchaser of pepper and rubber which are taxable at last point of purchase in the State. Therefore, according to him, attempt of evasion of tax does not arise at the point of purchase and holding of stock by petitioner. However, Government Pleader defended the orders by stating that quantity that was found excess was very high and even if petitioner is the first purchaser, petitioner was bound to maintain proper books of accounts which admittedly petitioner did not have. Since three authorities have concurrently found that petitioner has not maintained proper accounts, levy of penalty under Section 45A of the KGST Act in principle is only to be upheld and I do so. However, it is seen that the tax effect on the excess quantity is only Rs.13,111.81 and the penalty levied and sustained is almost

double the amount of tax. Having regard to the fact that petitioner is obviously the first purchaser and even before the commodity attained the quality of last purchase, inspection was carried out and goods accounted, there is no likelihood of evasion of tax in respect of the commodity later. In the circumstances, I modify the impugned orders by reducing the penalty to rupees ten thousand. The O.P. is allowed to the above extent.

C.N.RAMACHANDRAN NAIR
Judge

pms